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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GINA MERCIERI, an individual,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, a New York corporation
in its capacities as a fiduciary
administrator and insurer of the
Google, Inc. Employee Life Insurance
Plan,

Defendants.

Case No.: 19-cv-2487

COMPLAINT FOR BENEFITS AND
FOR VIOLATIONS OF THE
EMPLOYEE RETIREMENT
INCOME SECURITY ACT OF 1974
(ERISA)

5. Plaintiff is informed and believes that Defendant METROPOLITAN LIFE INSURANCE COMPANY (“MetLife”) is, and at all times mentioned herein was, a corporation formed under the laws of the state of New York; with its principal place of business in New York, New York; licensed to do business in California; and doing business throughout the state of California. At all relevant times relevant herein, the Plan provided life insurance coverage and benefits to employees of Google, Inc., including Plaintiff, funded by a group policy of insurance contract with MetLife. MetLife is the claims fiduciary responsible for paying benefits under the Plan and making all determinations regarding eligibility and benefits under the Plan. As such, MetLife is a plan administrator within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). As plan administrator, and as an entity that exercised discretion over Plan administration and assets, MetLife is, and at all times mentioned herein was, a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). As a fiduciary that makes benefit determinations and funds those same benefits, MetLife operates under an inherent structural conflict of interest.

FACTUAL ALLEGATIONS

6. Ms. Mercieri was an employee of Google, Inc., and during her tenure was a participant in the Plan.

7. Upon termination of employment, the Plan terms allowed participating employees to convert their life insurance coverage to individual coverage within a specified window of time. Under the Plan such conversions were to be effectuated without proof of insurability.

8. Ms. Mercieri is an individual with serious disabilities and health issues that make purchasing an individual policy of life insurance on the open market impossible. The only vehicles by which she can secure life insurance

1 coverage are group employee benefit plans, and, if appropriate (as here)
2 conversion plans arising from group employee benefit plans.

3 9. Ms. Mercieri delivered to MetLife the required paperwork and
4 initial premium payment to convert her plan within the time prescribed by the
5 Plan.

6 10. After the deadline for submitting the conversion paperwork,
7 MetLife rejected Ms. Mercieri's conversion request and returned the premiums
8 paid. MetLife falsely claimed that the paperwork and funds had been submitted
9 late. MetLife invited her instead to apply for an individual policy of life
10 insurance that would have required her to submit proof of insurability.

11 11. Ms. Mercieri alleges, on information and belief that the Plan does
12 not properly confer discretionary authority upon MetLife to interpret or construe
13 the Plan. To the extent that the Plan does confer discretionary authority upon
14 MetLife to construe the Plan, California Insurance Code Section 10110.6 renders
15 such discretionary authority void as a matter of California law.

16 FIRST CAUSE OF ACTION

17 (Breaches of Fiduciary Duty Under ERISA § 502(a)(3))

18 28. Ms. Mercieri realleges and incorporates by reference all allegations
19 contained in the foregoing paragraphs, as if fully stated herein.

20 29. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), requires fiduciaries
21 to discharge their duties solely in the interests of employee benefit plan
22 participants and beneficiaries and for the exclusive purpose of providing
23 benefits and defraying reasonable expenses of administering the plan.

24 30. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), requires fiduciaries
25 to discharge their duties with the care, skill, prudence, and diligence under the
26 circumstances then prevailing that a prudent man acting in like capacity and
27

1 familiar with such matters would use in the conduct of an enterprise of a like
2 character and with like aims.

3 31. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), requires fiduciaries
4 to discharge their duties in accordance with the documents and instruments
5 governing the plan insofar as such documents and instruments are consistent
6 with the provisions of ERISA.

7 32. ERISA further imposes upon fiduciaries a duty of candor that
8 requires fiduciaries to communicate thoroughly and honestly with participants
9 and beneficiaries about matters that could impact their entitlement to benefits
10 and/or the calculation thereof.

11 33. In committing the acts and omissions herein alleged, MetLife
12 breached its fiduciary duties in violation of ERISA §§ 404(a)(1)(A), (B) and (D),
13 29 U.S.C. §§ 1104(a)(1)(A)(B) and (D), as well as its duty of candor.

14 34. Ms. Mercieri is informed and believes, and thereon alleges, that
15 MetLife has allowed other similarly situated employees to convert their group
16 life insurance coverage to individual policies of life insurance without delay or
17 obfuscation. MetLife's refusal to process Ms. Mercieri's conversion constitutes a
18 breach of its fiduciary duties in violation of ERISA §§ 404(a)(1)(A) and (B), 29
19 U.S.C. §§ 1104(a)(1)(A) and (B), and the ERISA fiduciary duty of candor.
20 Wherefore, Ms. Mercieri is entitled to appropriate equitable relief including but
21 not limited to injunction and surcharge.

22 PRAYER FOR RELIEF

23 WHEREFORE, Ms. Mercieri prays judgment as follows:

24 A. For appropriate equitable relief pursuant to ERISA § 502(a)(3), 29
25 U.S.C. § 1132(a)(3), in the form of retroactive and prospective restoration the
26 right to convert and to participate in the conversion Plan;

1 B. Alternatively, for appropriate equitable relief pursuant to ERISA §
2 502(a)(3), 29 U.S.C. § 1132(a)(3), including but not limited to a declaration of her
3 rights hereunder with respect to MetLife; an injunction against further failure to
4 allow conversion and/or participation, and/or surcharge for any pecuniary
5 injuries Ms. Mercieri has suffered as a consequence of MetLife's breaches of its
6 ERISA fiduciary duties, including but not limited to the life insurance benefits
7 Ms. Mercieri's beneficiary would be entitled to upon her death had MetLife
8 honored her right to convert the plan;

9 C. For reasonable attorneys' fees and costs incurred by Ms. Mercieri in
10 the prosecution of this action pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);

11 D. For pre-judgment interest and post-judgment interest on any and all
12 amounts awarded to Ms. Mercieri; and

13 E. For all such other relief as the Court deems appropriate and
14 equitable.

15
16 DATED this 2nd day of May 2019.

17 **Creitz &**
18 **Serebin** LLP

19 By /s/ Joseph A. Creitz
20 Joseph A. Creitz
21 Lisa S. Serebin
22 Attorneys for Plaintiff Gina Mercieri
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